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SAMUEL A. KASSATLY LAW OFFICE
20690 VIEW OAKS WAY
SAN JOSE, CA 95120

EXAMINER
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/488,470
Filing Date: January 20, 2000
Appellant(s): SUNDARESAN, NEELAKANTAN

Samuel A. Kassatly, Reg. No. 32,247
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 08/04/2004.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

The rejection of claims 1-32 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

BizRatecom, Making the Web a Safer, Better Place to Shop!,

<http://web.archive.org/web/19981205082910/http://www.bizrate.com/> copyright 1997,

1998 Binary Compass Enterprises, pages 1-29.

5,893,098

Peters et al.

04-1999

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 112

Claims 1, 9, 17 and 25 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains

subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

As in claims 1, 9, 17 and 25, the features: *businesses that are selected from an unrestricted pool of merchants, and updated cumulative business satisfaction ratings from the users' on-line surveys or feedback automatically cause the on-line ranking system to re-index the rating data* were not described in the specification, and are therefore considered New Matter.

Claim Rejections - 35 USC § 103

Claims 1-2, 6-10, 14-18, 22-26 and 30-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over BizRate.com [http://web.archive.org/web/19981205082910/http://www.bizrate.com/] in view of Peters et al. [USP 5,893,098].

Regarding claims 1, 9, 17 and 25, BizRate.com is an online service website that provides consumers with information of a product based on ranking data from customers. A merchant is evaluated by a remote user either at the time of sale via a Web interface, or after product delivery via email (BizRate, page 19). As described at pages 17-18, ie. describing a summary of feedback from actual customers. Thus, the BizRate system conducts two kinds of surveys, one via a Web interface as *on-line*, and

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the other via email as off-line. If the survey received via a Web interface, BizRate is *an on-line ranking system for receiving any of users' online surveys or feedback about businesses*. Every merchant listed in BizRate has been rated based on 10 dimensions of service, which includes, Price, Product Selection, Product Information... (BizRate, pages 8 and 13-14) as the step of *generating rating data from the any of the users' on-line surveys or feedback*. As described at page 1, an interface of BizRate receives a query, either by entering search criteria into the search box or browsing the Product Category, from consumers who are located at remote locations. Pages 3-5 describe a result of the merchants under category Apparel > Accessories. By using a Shopping Filters feature, a user could filter the list of merchants to only those that have the features and capabilities of the user. If only one aspect of shopping is particularly important to a user, a pull down menu could be used to have the merchants ranked according to the rating data on that dimension (BizRate, page 11). As seen in pages 3-5, by entering keywords into the search box, a remote user receives a result list of merchant as in pages 3-5. If the filter is disable, *the rating data correlates* SunglassSite.com as *higher quality search match to* an overall rating of 8.47 based on 0-10 numerical rating scale as *higher business satisfaction rating*. Pages 3-5 also indicate *a result sorter for sorting query results generated by the search engine, based on the rating data and for generating ranked matches*. As described at pages 22-26, the survey for B2C Online Merchant is based on a user profile with the user's email address for communication as *creating a user profile history from a user's address*. B2C could be re-rated by the user if he/she makes another purchase with B2C as disclosed at page 19. Hence, the rating will be updated based on

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the last evaluation as *enabling the user to update rating that was previously provided by the user*, and by using the email address, no one can revise rating provided by others as *disabling the user from revising rating provided by other users*. BizRate fails to teach the step of *indexing the rating data, storing the rating data indexed by the on-line ranking system*, and *updated cumulative business satisfaction rating from the users' on-line ranking system or feedback automatically cause the on-line ranking system to re-index the rating data, and further cause the result sorter to generate ranked matches based on the re-indexed rating data*. Peters teaches a system for obtaining surveys from a plurality of users (Peters, Col. 2, Line 45-Col. 3, Line 16). The survey answers with rating data are indexed and stored in a database by name and email address as *indexing the rating data* and *storing the rating data* (Peters, Col. 4, Lines 28-30; Col. 19, Lines 46-57; Col. 21, Line 65-Col. 22, Line 13; Col. 30, Lines 12-19). Peters further discloses the database is updated with respondents' answer, or added by new survey (Peters, Col. 26, Lines 43-50). As seen, the feedback causes the system to re-index the database with updates or new respondents' answers by using email addresses. In BizRate, based on the new rating after re-indexing rating data, when a new search occurs, a new rank match is similar to BizRate pages 3-5 will be returned to the user as *feedback automatically cause the on-line ranking system to re-index the rating data, and further cause the result sorter to generate ranked matches based on the re-indexed rating data*. It would have been obvious for one of ordinary skill in the art at the time the invention was made to modify the BizRate system by indexing the rating data and storing the rating data that were index in a data

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repository as taught by Peters in order to update, retrieve the rating data of a business survey.

Regarding claims 2, 10, 18 and 26, BizRate and Peters, in combination, teach all of the claimed subject matter as discussed above with respect to claims 1, 9, 17 and 25, BizRate further discloses *a search results transformer that converts the ranked matches to a user browsable form* at pages 3-5.

Regarding claims 6, 14, 22 and 30, BizRate and Peters, in combination, teach all of the claimed subject matter as discussed above with respect to claims 1, 9, 17 and 25, BizRate further discloses *any of the users' on-line surveys or feedback include annotations* at pages 13-14.

Regarding claims 7, 15, 23 and 31, BizRate and Peters, in combination, teach all of the claimed subject matter as discussed above with respect to claims 1, 9, 17 and 25, BizRate further discloses *any of the users' on-line surveys or feedback include any one or more of a questionnaire, a survey, or a web based rating service* at pages 13-14.

Regarding claims 8, 16, 24 and 32, BizRate and Peters, in combination, teach all of the claimed subject matter as discussed above with respect to claims 1, 9, 17 and 25, BizRate further discloses *the interactive criteria assess the quality of a business in terms of*

any one or more of: customer satisfaction, professionalism, cost, and ease of use of a product or service at pages 13-14.

Claims 3-5, 11-13, 19-21 and 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over BizRate.com [http://web.archive.org/web/19981205082910/http://www.bizrate.com/] in view of Peters et al. [USP 5,893,098] and Applicant's Admitted Prior Art [Background of the Invention, pages 1-3].

Regarding claims 3, 11, 19 and 27, BizRate and Peters, in combination, teach all of the claimed subject matter as discussed above with respect to claims 2, 10, 18 and 26, but fail to disclose *an indexing engine that indexes web documents to generate indexed data*. Applicant's Admitted Prior Art teaches *an indexing engine that indexes web documents to generate indexed data* (Applicant's Admitted Prior Art, page 2, Lines 6-16). Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify the combined BizRate and Peters system by using a Web Crawler to index web documents in order to update the merchant database.

Regarding claims 4, 12, 20 and 28, BizRate, Peters and Applicant's Admitted Prior Art, in combination, teach all of the claimed subject matter as discussed above with respect to claims 3, 11, 19 and 27. The BizRate/Peters/Applicant's Admitted Prior

Art combination further discloses *a metadata repository for storing web documents that have been download on-line* (see Applicant's Admitted Prior Art, page 2, Lines 6-16).

Regarding claims 5, 13, 21 and 29, BizRate, Peters and Applicant's Admitted Prior Art, in combination, teach all of the claimed subject matter as discussed above with respect to claim 3, 11, 19 and 27. BizRate further discloses *a query transformer which, when prompted by a query request to the indexed data and generates the query results* (BizRate, page 1).

(11) Response to Argument

A. Response to Appellant's Argument regarding 35 U.S.C § 112 Rejection

Claims 1, 9, 17 and 25 were rejected under 35 U.S.C. 112, first paragraph because the amended features of the amendment filed on 01/06/2004, *businesses that are selected from an unrestricted pool of merchants, and updated cumulative business satisfaction ratings from the users' on-line surveys or feedback automatically cause the on-line ranking system to re-index the rating data*, were not described in the specification. The arguments with respect to this ground of rejection on pages 8-9 of the Appeal Brief were fully considered, but they are not persuasive

(a) As argued by appellant in paragraph 8.1.A on page 8, line 14-page 9, line 6:

Applicant submits that the following feature "businesses that are selected from an unrestricted pool of merchants" is disclosed in the present application. Reference is made to

FIG. 1 of the application that is described as follows: "FIG. 1 is a schematic illustration of an exemplary operating environment in which a business rating system of the present invention may be used" (Page 6, lines 19-20).

In addition, the application clearly states that "the business rating system 10 will be described in connection with the WWW" (page 8, lines 6-7). In other terms, the merchants are located on the Internet, and absent a clear indication to the contrary, it should be quite clear to person of ordinary skills in the art that the businesses on the Internet are part of an unrestricted pool of merchants.

Examiner respectfully traverses because of the following reasons:

If WWW is *an unrestricted pool of merchant*, and business is part of this pool as argued by appellant. FIG. 1 and the content of page 9 (not 8), lines 6-7 still does not have the description of selecting businesses from this unrestricted pool as claimed:

businesses that are selected from an unrestricted pool of merchants.

(b) As argued by appellant in paragraph 8.1.B on page 9, lines 7-21:

The feature "updated cumulative business satisfaction ratings from the users' on-line surveys or feedback automatically cause the on-line ranking system to re-index the rating data" is disclosed in the present application.

The above feature is inherent in the present system in that as new satisfaction ratings are collected by the users, these new satisfaction ratings formed the updated cumulative business satisfaction ratings, which, upon query by another user, the rating data are index again, that is re-indexed. It should be understood that the indexing process of the rating data is a continuous, automatic process and the rating data are not indexed once and the process stops (which defeats the intent of the present invention).

Examiner respectfully traverses because of the following reasons:

As set forth in 35 U.S.C. 112, first paragraph, and MPEP:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention (35 U.S.C. 112 Specification).

To obtain a valid patent, a patent application must be filed that contains a full and clear disclosure of the invention in the manner prescribed by 35 U.S.C. 112, first paragraph. The requirement for an adequate disclosure ensures that the public receives something in return for the exclusionary rights that are granted to the inventor by a patent. The grant of a patent helps to foster and enhance the development and disclosure of new ideas and the advancement of scientific knowledge. Upon the grant of a patent in the U.S., information contained in the patent becomes a part of the information available to the public for further research and development, subject only to the patentee's right to exclude others during the life of the patent.

In exchange for the patent rights granted, 35 U.S.C. 112, first paragraph, sets forth the minimum requirements for the quality and quantity of information that must be contained in the patent to justify the grant. As discussed in more detail below, the patentee must disclose in the patent sufficient information to put the public in possession of the invention and to enable those skilled in the art to make and use the invention. The applicant must not conceal from the

public the best way of practicing the invention that was known to the patentee at the time of filing the patent application. Failure to fully comply with the disclosure requirements could result in the denial of a patent, or in a holding of invalidity of an issued patent (MPEP § 2162).

Therefore, by saying *[T]he above feature is inherent in the present system*, the claimed *updated cumulative business satisfaction ratings from the users' on-line surveys or feedback automatically cause the on-line ranking system to re-index the rating data* does not meet 35 U.S.C. 112, first paragraph, and MPEP requirement, and *without a full and clear disclosure of the invention in the manner prescribed by 35 U.S.C. 112, first paragraph*, the obvious question is: *how should it be understood that the indexing process of the rating data is a continuous, automatic process and the rating data are not indexed once and the process stops (which defeats the intent of the present invention).*

Based on the reasons as discussed above, claims 1, 9, 17 and 25 do not satisfy 35 U.S.C. 112, first paragraph, and examiner respectfully requests that the Board of Appeals affirm the above rejection.

B. Response to Appellant's Argument regarding 35 U.S.C § 103 Rejection

(a) Regarding the appellant's argument based on MPEP § 2143.03, the examiner respectfully traverses because all of the claimed limitations were taught by the prior art, and each of the terms of the claims were considered and matched. The following details below will support the examiner's assertion.

(b) In response to appellant's argument that there is no suggestion to combine the references as in pages 12-14, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Indexing technique is a conventional method to speed up the search and organize data, and BizRate is a search engine with a local database to support the search. Therefore, an index mechanism is a requirement for BizRate system in order to search and organize data.

(c) As argued by appellant on page 15, lines 17-27:

*With reference to the pages from the BizRate web site, **BizRate does not allow ALL the businesses on the WWW to be rated. In fact, page 8 clearly states: "We do not want to list every merchant on the Web, only those that can serve you best. As one of our users puts it: "If it ain't on BizRate, it ain't worth shopping at!"***

*As a result, BizRate does not describe a **self-correcting system** for use with a search engine to rank search results **based upon a ranking of businesses that are selected from an unrestricted pool of merchants**. One of the main problems addressed by the present invention is to provide a better search based on an unrestricted pool of merchants, such as on the merchants on the Internet.*

Examiner respectfully traverses because the claimed, *a self-correcting system* could be distinguished over the prior art only by the special features of the system as in the body of the claim, not just only the term alone as bolded. Examiner agrees with

appellant that BizRate does not allow ALL the businesses on the WWW to be rated, however, this means that BizRate has a selection of businesses, and this feature definitely meets the requirement of the claimed limitation: businesses that are selected from an unrestricted pool of merchants.

(d) As argued by appellant on page 15, line 28-page 16, line 9:

The present system is automatic in that it does not require an intermediary company, such as BizRate, to select the merchants first and then take into account the customers' feedback. In addition, the present invention, contrary to BizRate, does not require the staff to spend "countless hours compiling detailed information on each merchant's capabilities and site features." Reference is made to page 8 of the BizRate cited reference. Moreover, contrary to BizRate, the present invention opens up the entire pool of merchants all around the globe to being rated by users, whether these users are customers or not. BizRate's survey of customers' opinions is limited to customers who made purchases. Reference is made to the last paragraph on Page 19 of the BizRate cited reference.

Examiner respectfully points out that this argument does not relate to the claimed subject matter of claims 1, 9, 7 or 25, and therefore does not warrant consideration (ie., the subject matter is not claimed).

(e) As argued by appellant on page 16, line 10-page 17, line 5 and page 17, line 18-24:

In addition, BizRate does not provide a profile manager for creating a user profile history from a user's address, wherein the user profile history enables the user to update a rating that was previously provided by the user, and disables the user from revising ratings provided by other users, and wherein updated cumulative business satisfaction ratings from the users' on-line surveys or feedback automatically cause the on-line ranking system to

re-index the rating data, and further cause the result sorter to generate ranked matches based on the re-indexed rating data.

...

In order to compensate for the absence of these important elements, the Examiner essentially resorts to Peters, as indicated in the excerpt above, reasoning in part, as follows: "It would have been obvious for one of ordinary skill in the art at the time the invention was made to modify the BizRate system by indexing the rating data and storing the rating data that were index in a data repository as taught by Peters in order to update, retrieve the rating data of a business survey."

If however, such combination were permissible, it would still not yield the system and method as claimed herein, in that the combination would still lack the following element; "wherein updated cumulative business satisfaction ratings from the users' on-line surveys or feedback automatically cause the on-line ranking system to re-index the rating data, and further cause the result sorter to generate ranked matches based on the re-indexed rating data."

Examiner respectfully traverses because of the following reasons:

As illustrated in the specification of the patent application on page 10, lines 10-16: *the crawler visits and downloads web documents to the metadata repository 160 where they are stored and updated systematically. The web documents are then indexed by the indexing engine 100 to generate indexed data 175. The on-line ranking system 150 receives users' on-line surveys or feedbacks, and generates ranking data for storage in the on-line ranking repository 170. While the business rating system 10 is described as including two repositories 160, 170, it should be clear these two repositories 160, 170 can be functionally combined in a single database, and page 11, lines 7-12: the user has the option to complete a business ratings survey form 455 for submitting new rating information regarding the businesses to the on-line ranking system 150. This new rating information will be integrated with the rating data already stored in the on-line ranking repository 170 for use in subsequent searches. As seen, the rating data is indexed only once using indexed data 175. If there is new rating information, the new rating data will be integrated with the old one. In other*

words, the rating data is updated, and the process of updating rating data as illustrated in the specification of the patent application is considered as *updated cumulative business satisfaction ratings from the users' on-line surveys or feedback automatically cause the on-line ranking system to re-index the rating data.*

As shown in pages 22-26 is the survey for B2C Online Merchant based on a user profile on top of page 25 with the user's email address on page 26 for communication as *creating a user profile history from a user's address*. B2C could be re-rated by the user, or another user, if he/she makes another purchase with B2C as disclosed in page 19, and obviously, the rating will be updated based on the last evaluation as *enabling the user to update rating that was previously provided by the user*, and by using the email address, and employing security protocol and personal information privacy policies on page 8, obviously, no one can revise rating provided by others as *disabling the user from revising rating provided by other users*.

The lacking of BizRate is the step of *indexing the rating data, storing the rating data indexed by the on-line ranking system, and updated cumulative business satisfaction rating from the users' on-line ranking system or feedback automatically cause the on-line ranking system to re-index the rating data, and further cause the result sorter to generate ranked matches based on the re-indexed rating data.*

However, referring back to BizRate, as shown on page 15, the *last week* top 25 rating of CD Universe is 12, but *this week* top 25 rating is 10 based on the rating data in *Customer Rating* column. As seen, the rating of a business, obviously, is updated continuously, and obviously, from user feedback. In different words, the

technique of updating rating as shown on page 15 indicates the claimed *feedback automatically cause the result sorter to generate ranked matches based on the updated rating data*.

Indexing technique is a conventional method to speed up the search and organize data. Peters teaches a system for obtaining surveys from a plurality of users (Peters, Col. 2, Line 45-Col. 3, Line 16). As shown in FIG. 6-8 is an example of a survey form. As shown in FIG. 4 is the representation of the rating database, wherein rating data are indexed by user ID or user's email address (Peters, Col. 4, Lines 28-30; Col. 19, Lines 46-57; Col. 21, Line 65-Col. 22, Line 13; Col. 30, Lines 12-19) as the step of *indexing the rating data*, and *storing the rating data by the system*. Peters further discloses the database is updated with respondents answer, or added by new survey (Peters, Col. 26, Lines 43-50). As seen, the feedback causes the system to update or integrate new rating data with old rating data by using user ID or user's email address to locate the record for updating. In different words, the technique as discussed performs the claim *feedback automatically cause the on-line ranking system to integrate or re-index the rating data*.

Thus, an index mechanism is a requirement for BizRate system in order to search and organize data.

(f) As argued by appellant on page 17, lines 6-10:

Applicant submits that BizRate does not disclose "a result sorter for sorting query results generated by the search engine, based on the rating data from the on-line ranking repository,

and for generating ranked matches", in that the rating data recited in this element must have been (1) indexed and (2) stored, which steps are admittedly lacking in BizRate.

Examiner respectfully traverses because of the following reasons:

As shown on pages 3-5 is the technique of *sorting query results generated by the search engine, based on the rating data and for generating ranked matches*, and the missing of indexing and storing step could be supported by Peters as discussed above.

(g) As argued by appellant on page 17, lines 11-17:

Though Peters discloses the intake of surveys, it does not output sorted query results based on the "rating data". Applicant submits that "rating data" is clearly defined in the claims as rating data that correlates higher quality matches to higher business satisfaction rating. Thus, Peters does not disclose rating data as claimed herein, and therefore the combination of Peters and BizRate, is not permissible because neither reference provides a suggestion or teaching of the missing features.

Examiner respectfully traverses, as disclosed by BizRate, every merchant listed in BizRate has been rated based on 10 dimensions of service, which includes, Price, Product Selection, Product Information... as *rating data* (BizRate, pages 8 and 13-14). As on pages 22-26 As shown in page 1 is an interface of BizRate for receiving a query, either by entering search criteria into the search box or browsing the Product Category, from consumers who are located at remote locations. Pages 3-5 is a result of the merchants under category Apparel > Accessories. By using Shopping Filters feature, a user could filter the list of merchants to only those that have the features and capabilities of the user. If only one aspect of shopping is particularly important to a user, a pull down menu could be used to have the merchants ranked according to the rating data on that dimension (BizRate, page 11). As seen in pages 3-5, by entering keywords

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into the search box, a remote user receives a result list of merchant as in pages 3-5. If the filter is disable, *the rating data correlates* SunglassSite.com as *higher quality search match to* an overall rating of 8.47 based on 0-10 numerical rating scale as *higher business satisfaction rating*.


For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


Examiner Hung Pham
October 28, 2004

Conferees
John Breene, Supervisory Patent Examiner, AU 2162
Safet Metjahic, Supervisory Patent Examiner, AU 2161

Samuel A. Kassatly
6819 Trinidad Drive
San Jose, CA 95120



SAFET METJAHIC
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100



JOHN BREENE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100